

Terrence Kay
OSB#814375
Terrence Kay, P.C.
3155 River Road S, Suite 150
Salem, OR 97302-9836
Telephone: 503/588-1944
Fax: 503/588-1946
Email: Terrence@kaylawfirm.com

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WAYNE McFARLIN

Plaintiff,

v.

EDWARD GORMLEY, an individual; CITY
OF McMinnville, a Municipal Corporation;
CITY COUNTY INSURANCE SERVICES
TRUST; ROD BROWN, an individual;
PUBLIC SAFETY LIABILITY
MANAGEMENT INC., an Oregon corporation;
WALDO FARNHAM

Defendants.

Case No. 3:06-CV-1594-HU

**PLAINTIFF CONCISE STATEMENT
OF ADDITIONAL MATERIAL
FACTS IN OPPOSITION TO
DEFENDANTS CITY COUNTY
INSURANCE SERVICES TRUST,
ROD BROWN and PUBLIC SAFETY
LIABILITY MANAGEMENT INC.
MOTION FOR SUMMARY
JUDGMENT**

1. Notice of tort claims to Defendants Brown, CCIST and PSLMI, to the extent required, was given in April 2006 (Ex. 10), and on October 19, 2006 (Ex. 59), within six months of Plaintiff learning after depositions and documents were provided in this case as to the conduct and identity of these three Defendants for the claims asserted against them (Ex. 40, ¶19). Plaintiff did not reasonably discover more than six months prior to the written notice October 19,

Page 1 – Plaintiff Concise Statement of Additional Material Facts in Opposition to Defendants City County Insurance Services Trust, Rod Brown and Public Safety Liability Management Inc. Motion for Summary Judgment

H:\McFARLIN\ConcStmntCCIS110807.1sn.doc

TERRENCE KAY, P.C.

Attorney at Law

3155 River Road S., Suite 150 - Salem, OR 97302

Telephone: 503/588-1944 Fax: 503/588-1946

Email: terrence@kaylawfirm.com

2006 (Ex. 59), about the identity of these Defendants and their actions giving rise to liability for Plaintiff's claims.

2. Brown admits as to his actions and inactions involving McFarlin that part of his services was for the Defendant City, part for CCIST and part for himself (see Declaration of Rod Brown on file herein dated October 11, 2007). Brown's duties involve practices to lessen exposure to litigation, including for the City (Ex. 45, pp. 20-21). Brown did not report to the City any current or former employees of the Police Department wanting McFarlin's resignation or termination before it occurred (Ex. 45, p. 84). Prior to the resignation Brown believed there was possible liability for the City if a dispute arose, that information should be brought to the City but did not tell anyone about his discussion with Farnham (Ex. 45, p. 87). Brown may have reported the situation to Defendant CCIST (Ex. 45, p. 87). Prior to McFarlin's employment ending at the City, he asked him to consider appointment as Chief in Albany (Ex. 45, p. 89) and looked into an interim chief for the City before McFarlin was asked to resign (Ex. 45, pp. 106-108).

3. Brown identifies an October 21, 2005 email (Ex. 27) about an interim chief based on his assumption there was a "plan" to obtain McFarlin's resignation (Ex. 45, pp. 110-111, 113-115). Brown did nothing to inform McFarlin about concerns he saw in the police department during the two years before he left (Ex. 45, p. 121), although Brown's work involves lessening the exposure to litigation. (Ex. 45, pp. 20-21).

4. Brown saw the risk of liability as the movement to replace McFarlin started (Ex. 45, p. 122).

5. McFarlin had rights under the City employee handbook (Ex. 15) to receive information about complaints lodged against him (Ex. 45, p. 123).

6. Brown says a request for McFarlin to resign would probably require City Council approval (Ex. 45, p. 124). There was no City Council approval for the request or demand that McFarlin resign (Ex. 40, ¶8; Ex. 43, p. 55).

7. Brown did not say McFarlin should be allowed to finish his review for possible selection as the Salem Chief before he would be asked to resign, in the meeting with Gormley, Taylor, Olson and Farnham, a few days before the October 24, 2005, meeting with McFarlin about resignation (Ex. 45, p. 130). Olson said in that same meeting McFarlin's resignation was discussed (Ex. 43, pp. 86-87).

8. Olson admits to protect and help McFarlin be selected as the Chief in Salem he should not have been asked to resign (Ex. 43, p. 105), and all the information about McFarlin should have been disclosed to McFarlin to assess the situation of being asked to resign and treated with openness, honesty and disclosure at the City for McFarlin and other Councilors (Ex. 43, pp. 97-98, 110-111).

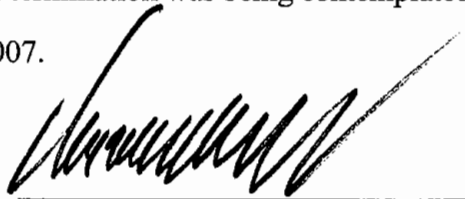
9. Brown did not disclose to McFarlin prior to McFarlin being asked to resign that Brown had looked for an interim chief (Ex. 45, p. 121). The police union president Scales met with Brown and Gormley and did not tell them a union vote was set (Ex. 51, p. 27). Brown did not testify that he recommended to Gormley or Olson in the meeting with Farnham to disclose all information about complaints about McFarlin to him before being asked to resign.

10. Brown gave Waldo Farnham's pager number out for people to call him about Farnham's private investigation of McFarlin (Ex. 46, p. 43). Farnham had no skill to conduct an investigation of the Chief (Ex. 46, p. 73). Brown did not inform Farnham during Farnham's investigation or meetings Farnham had with Mike Full that Full had made a death threat or that Full was a risk to McFarlin's safety (Ex. 47, pp. 112-113).

11. Farnham was at Gormley's plumbing office to ask Gormley to replace McFarlin in October 2005 before he resigned, and after that Gormley told Farnham he had asked the Chief to resign (Ex. 46, pp. 19-20, 23). Farnham gave his written complaint about McFarlin (Ex. 18) to Gormley (Ex. 46, p. 23).

12. In McFarlin's opinion as a police chief, with his experience, training and knowledge about the City, Brown was negligent on behalf of the City, himself and CCIST and his company, by not informing McFarlin before his resignation, or recommending to others that they fully inform him, that City Council had not authorized his resignation be demanded, Gormley had concealed complaints about his conduct, and others had asked for his termination including Brown and McFarlin's due process right to notice of these matters and a right to respond was being denied when McFarlin's employment termination was being contemplated. (Ex. 40, ¶12)

Dated this 12th day of November, 2007.



Terrence Kay
Terrence Kay, P.C.
OSB #814375
503/588-1944
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November, 2007, I served the foregoing PLAINTIFF CONCISE STATEMENT OF ADDITIONAL MATERIAL FACTS IN OPPOSITION TO DEFENDANTS CITY COUNTY INSURANCE SERVICES TRUST, ROD BROWN and PUBLIC SAFETY LIABILITY MANAGEMENT INC. MOTION FOR SUMMARY JUDGMENT on the following parties:

Karen O'Kasey
Hoffman Hart & Wagner LLP
1000 SW Broadway, Suite 2000
Portland, OR 97205
Fax: (503) 222-2301

Of Attorneys for Defendants Gormley and City of McMinnville

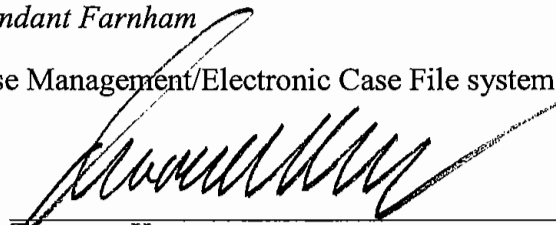
Mr. Robert S. Wagner
Miller & Wagner LLP
2210 NW Flanders Street
Portland, OR 97201
Fax: (503) 299-6106

Of Attorneys for Defendants Brown, CCIST and PSLM

Walter Sweek
Cosgrave Vergeer Kester LLP
805 SW Broadway 8th Floor
Portland, OR 97205
Fax: (503) 323-9019

Of Attorneys for Defendant Farnham

by electronic means through the Court's Case Management/Electronic Case File system.



Terrence Kay
Terrence Kay, P.C.
OSB #814375
503/588-1944
Attorney for Plaintiff